

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRENDA MARCELL OWEN,

Plaintiff,

v.

NANCY BERRYHILL,¹
Acting Commissioner of Social Security,

Defendant.

ORDER

18-cv-206-wmc

Plaintiff Brenda Marcell Owen has filed a fourth proposed complaint seeking review of a social security disability or supplemental security income decision. Plaintiff asks for leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 and supports her request with a financial affidavit.

From the affidavit plaintiff submits, I find that she is unable to prepay the fees and costs of commencing this action or to give security therefor. However, before I will direct the clerk's office to issue summons, I note that plaintiff once again has failed to allege facts in her complaint showing that this court has the authority to decide her case. Under 42 U.S.C. § 405(g), this court has authority only to review a "final" decision of the Commissioner of Social Security denying a plaintiff's application for social security disability benefits. Under the social security rules, a decision denying social security benefits does not become final unless the claimant has completed all the steps of the administrative process, including filing a request for review with the Appeals Council. When the Appeals Council denies review, the decision of the commissioner becomes "final" and an appeal to federal court is permissible.

Plaintiff alleges that she has completed all the steps of the administrative process and obtained a final decision from the commissioner, but there is no proof of this: plaintiff has not

¹ I have amended the caption to reflect that Nancy Berryhill is presently the Acting Commissioner of Social Security.

submitted a copy of the final decision or the notice that she should have received letting her know that her appeal was denied from the Social Security Appeals Council.

Once again,, instead of dismissing the this complaint on the ground that plaintiff fails to state a claim for which relief may be granted, the court will provide plaintiff the opportunity to submit more information that shows that she really has obtained a final decision from the commissioner on her application for social security benefits. The easiest way to do this would be for plaintiff to submit a copy of the letter or letters from the Appeals Council denying her request for review, which plaintiff should have received if she completed the administrative process. Alternatively, plaintiff may submit a letter stating the specific date on which the final decision in her case was issued. Upon receipt of that information, the court will deem it to be an amendment to the complaint. If plaintiff has not taken all the steps needed to complete the administrative review process or has not yet received a final decision, then she may voluntarily dismiss this case without prejudice, which means that she could reopen it after completing the administrative process.

ORDER

IT IS ORDERED that plaintiff Brenda Marcell Owen's request to proceed *in forma pauperis* is GRANTED. Service of the complaint is STAYED pending plaintiff showing she has obtained a final decision from the commissioner identifying the administrative decision that she is challenging. If plaintiff fails to submit the additional information requested by May 25, 2018, then the court will dismiss this case.

Entered this 3rd day of May, 2018.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge